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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,930	09/09/2003	Valentin G. Barba	SMITHS/18DIV	3116

1473 7590 02/23/2004  
FISH & NEAVE  
1251 AVENUE OF THE AMERICAS  
50TH FLOOR  
NEW YORK, NY 10020-1105

EXAMINER
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PALABRICA, RICARDO J

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/658,930

**Applicant(s)**

BARBA, VALENTIN G.

**Examiner**

Rick Palabrica

**Art Unit**

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

***Election/Restrictions***

1. A telephone message was provided to Mr. Patrick Zhang, Applicant's Representative on February 12, 2004, to request an oral election to the following restriction requirement. On February 18, 2004, when a return call was made by Mr. Zhang, and during the course of the Examiner's identification of restrictable species in the invention, Mr. Zhang indicated preference to receiving the restriction requirements in a letter so that he can more clearly discuss the matter with the inventor.

2. This application contains claims directed to the following patentably distinct species of the claimed invention:

- A: Wherein storing energy is by charging at least one capacitor (e.g., see claims 3 and 14).
- B: Wherein storing energy is by charging a rechargeable battery (e.g., see claims 4 and 15).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic to the method claims and claim 12 is generic to the apparatus claims.

3. Upon election of one of the embodiments identified above as A and B, applicant is further required under 35 U.S.C. 121 to elect one of the following species of sensing the motor rotational speed for prosecution on the merits to which the claims shall be

Art Unit: 3641

restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic to the method claims and claim 12 is generic to the apparatus claims.

- C: Wherein sensing the motor rotational speed is by measuring the frequency of a Hall effect signal (e.g., see claims 8 and 19).
- D: Wherein sensing the motor rotational speed is by measuring the back emf of the motor (e.g., see claims 9 and 20).

4. Upon election of one of the embodiments identified above as A and B, applicant is further required under 35 U.S.C. 121 to elect one of the following species of reducing the first current for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic to the method claims and claim 12 is generic to the apparatus claims.

- E: Wherein reducing the first current is by reducing the voltage supplied to the motor (e.g., see claims 10 and 21).
- F: Wherein reducing the first current is by pulse width modulating a power signal to the motor (e.g., see claims 11 and 22).

5. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Art Unit: 3641

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 703-306-5756. The examiner can normally be reached on 7:00-4:30, Mon-Fri; 1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3641

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJP  
February 18, 2004

  
MICHAEL J. [unclear]  
SUPERVISORY PATENT EXAMINER